

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2105 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.G.BALAKRISHNAN

and

MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
 2. To be referred to the Reporter or not? No
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No
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DULERA SAKALCHAND GANDHI

Versus

STATE OF GUJARAT

Appearance:

MR MIHIR H JOSHI for Petitioners

MR MA BUKHARI, A.G.P. for Respondent No. 1

CORAM : MR.JUSTICE K.G.BALAKRISHNAN and
MR.JUSTICE J.M.PANCHAL

Date of decision: 06/05/98

ORAL JUDGEMENT

(Per : Balakrishnan,J.)

Rule. Mr. M.A.Bukhari, learned A.G.P. waives

service of rule on behalf of the respondent.

At the request of learned Counsel appearing for the parties, the petition is heard today.

The petitioners are owners of certain lands in village Kotarpur comprising in survey nos. 65 & 66. Some lands comprising in these survey numbers were acquired for the purpose of National Highway leading to Aerodrome. According to the petitioners, aggregate extent of land acquired was 9613 sq.mts., but while taking possession of the land by the authorities, an extent of 13875 sq.mts. of land was taken. The petitioners allege that an extent of 4262 sq.mts of land was not acquired and it was not the subject matter of either section 4(1) Notification or section 6 Declaration. The petitioners came to know about this when the matter was agitated before the Reference Court for enhancement of compensation. Thereafter, the petitioners made series of representations, but did not evoke any response. Therefore, they have filed present Special Civil Application praying that either the respondents may be directed to restore possession of the land admeasuring 4262 sq.mts. or they may be directed to initiate proceedings under the Land Acquisition Act in respect of the said land.

An affidavit-in-reply has been filed by the Deputy Executive Engineer, wherein it is admitted that there was no acquisition proceeding in respect of the disputed 4262 sq.mts. of land, which land was acquired for the purpose of formation of road. It is also admitted that there was joint measurement of the land with the help of District Inspector of Land Records and it was found that possession of an extent of 13875 sq.mts. of land from survey nos. 65 & 66 was taken over by the Department. It is also stated that the fresh proposal for acquiring the extent of 4262 sq.mts. of land is being made and within a short time, formalities will be completed for acquisition of the land.

We have heard the learned Counsel for the petitioner and learned A.G.P. Mr. Bukhari for the respondent.

The Counsel for the petitioner submitted that possession of the land was taken by the authorities in October, 1980 and the Government has been in possession of this land since that time and the petitioners were not paid any compensation for the land. They were not paid any rent or any other remuneration for use and occupation

of the land. It seems that there was some mistake regarding measurement of land and the petitioners themselves came to know about the mistake at a later stage.

On the facts and in the circumstances of the case, we direct the respondent to take urgent steps to acquire the land admeasuring 4262 sq.mts. for which formalities under the Land Acquisition Act are to be completed at the earliest. The Counsel for the petitioners brought to our notice that the Government has already issued guidelines in the matter of land acquisition and in case any excess land is taken over by the Government, the parties could be paid mesne profit at the rate of 5% of market value of the land. We make it clear that the petitioners would be at liberty to submit an application before the authorities seeking any reliefs in respect of the land which was under the unauthorised occupation of the Government. The authorities are directed to complete the proceedings at the earliest within a period of six months from the date of receipt of copy of this judgment. The application for mesne profits shall be filed by the petitioners within a period of two weeks and the respondent or its authorised officer shall dispose of the said application within a period of three months from the date of receipt of the application.

Rule is made absolute to the extent indicated hereinabove, with no order as to costs.

patel